In the High Court of Punjab and Haryana at Chandigarh.

RSA No.1171 of 2005

Date of decision:13.11.2007

Anil Sharma .... Appellant

Versus

Haryana Urban Development Authority,

Sector-14, Urban Estate, Gurgaon. .... Respondent

Present: Mr.RA Yadav,Advocate, for the appellant.

Mr.Dinesh Nagra,Advocate, for the respondent.

PERMOD KOHLI, J. (Oral):

This is plaintiff's second appeal challenging the judgment and decree dated 30.11.2004 passed by the learned Additional District Judge, Gurgaon, dismissing the Civil Appeal preferred by the plaintiff and allowing the cross- appeal filed by the respondent-HUDA.

Briefly stated, the facts of the case are that the plaintiff was allotted plot No.1090 in Sector 7 Extension, measuring 57.51 sq. metres in the Urban Estate, Gurgaon. The entire price of the plot was paid and the possession was delivered to him vide Possession Certificate Memo No.3073 dated 14.08.1996. It is the case of the plaintiff that he started construction and completed the DPC level which was checked by the defendant through

its Junior Engineer and a DPC level certificate was also issued vide Memo No.3469 dated 01.10.1996. The construction was raised as per the sanctioned plan. It is further alleged that after the completion of the construction, the plaintiff approached the defendant for completion certificate, but the defendant avoided the issuance of said certificate. Against the inaction of the defendant, the plaintiff filed a complaint before the District Consumer Forum, Gurgaon and the said Forum vide order dated 16.3.1998 directed the respondent-defendant to issue completion certificate without any further delay. Even after this direction, the completion certificate was not issued and the plaintiff was constrained to file execution proceedings under Section 27 of the Consumer Protection Act. While disposing of these proceedings, vide order dated 22.05.1998, the Consumer Forum directed the defendant to charge reasonable amount for making extra construction of bath room and issue construction completion certificate to the plaintiff. The defendant thereafter issued a notice vide Memo No.8453 dated 22.05.1998 to the plaintiff calling upon him to pay a sum of Rs.79,404.40 P. as charges for extra construction raised. The plaintiff also alleged that at the time of the delivery of the possession and demarcation, the defendants left an area vacant by leaving 2'-6" towards the Southern side of the plot of the plaintiff as shown in the red colour and marked by letters ABCD in the site plan. It has been further stated that the owner of the adjacent plot No.1091, Bhabinder Sharma, started raising construction on his plot. He constructed the wall by leaving 2 feet 6 inches portion towards the plot of the plaintiff. The plaintiff then again got his plot demarcated and came to know that the defendant has given him less area at the time of possession and demarcation. Accordingly,

the plaintiff also claimed half costs of the construction of the wall, as under the rules, when a common wall is constructed between two plots, price of the construction is to be shared by the plot owners. The plaintiff filed a suit for declaration challenging the demand made by the respondent-defendant and also claimed Rs.20,000/- as costs of half share of the southern wall.

The suit was contested by the defendant.

The learned trial Court framed the following issues:-

1. Whether the memo dated 8453 dated 11.5.1998 is illegal, void and binding? OPP

2. Whether plaintiff is entitled to recover compensation and payment of Rs.20,000/- as half costs of his southern wall of the plaintiff from the defendant? OPP

3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the plaintiff has no cause of action to file the present suit? OPD

5. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD

6. Whether this court has no jurisdiction to file the present suit? OPD

7. Relief.

Issue No.1 was decided against the plaintiff,whereas issue No.2 was decided in favour of the plaintiff and in the final judgment the learned trial Court upheld the validity of the Memo of demand, but directed the defendant-respondent to adjust Rs.20,000/-, against the penalty of Rs.79404.40, being half of the costs of the construction of the southern wall of the plaintiff's house.

Aggrieved of the judgment and decree of the learned trial Court dated 31.07.2004, the plaintiff-appellant herein preferred an appeal before the learned Additional District Judge, Gurgaon. The defendant-HUDA also filed a Cross-appeal which also came to be registered as Cross Appeal No.74 dated 27.10.2004 (HUDA Vs. Anil Sharma). Both these appeals have been decided by the judgment and decree dated 30.11.2004 by the learned Lower Appellate Court. The Lower Appellate Court dismissed the appeal of the plaintiff and allowed the Cross Appeal filed by the HUDA and set aside the judgment and decree of the learned trial Court so far as the adjustment of the amount of Rs.20,000/- against the demanded amount of Rs.79404.40 P. The learned Lower Appellate Court found that the plaintiff has raised the additional construction in violation of the sanctioned plan and accordingly, a penalty of Rs.79404.40 was imposed upon him vide Memo dated 22.05.1998. As regards, the decree for Rs.20,000/- is concerned, the learned Lower Appellate Court also came to a clear finding that the plot measuring 57.51 sq. metres was allotted to the plaintiff with

length of 10.75 metres and the breadth of two sides was 5.80 and 4.90 metres respectively. Thereafter, on submission of building plan Ex.D4 by the plaintiff, the same was sanctioned vide memo Ex.D3. The same size was depicted in the site plan and the same was approved. The learned Lower Appellate Court also recorded a finding that since the size of the plot was different from two sides, the plaintiff himself left a part of the allotted plot about 2 feet and 6 inches in width to carve out a rectangular shape of his plot and the adjoining plot owner constructed a wall on the southern side of the plaintiff's plot in his own plot. It has also been recorded that had the plaintiff constructed southern wall over the boundary of his plot, he was entitled to share cost of southern wall from the owner of plot No.1091, but since the plaintiff himself shifted the wall of his house leaving a space of 2 feet 6 inches, he is not entitled to the adjustment of Rs.20,000/- towards half of the cost of the construction of the southern wall incurred by him towards the total demand of Rs.79404.40 P.

I have heard the learned counsel for the parties at length.

Learned counsel for the appellant has not been able to dispute these findings of fact recorded by the learned Lower Appellate Court. It is contended that the HUDA at the time of delivery of the possession left the land but from the site plan submitted by the plaintiff himself for sanction he has given the original measurement of the plot and the HUDA sanctioned the same. It was for the plaintiff to have raised the construction as per the measurement recorded in the allotment letter and the sanctioned plan. He has chose to raise the construction of the southern wall by leaving a space of 2 feet 6 inches. There is nothing on record to show that the findings of the learned Lower Appellate Court are contrary to evidence or perverse in any

manner. It is settled law that the Lower Appellate Court is the final Court of fact. No substantial question of law arises. I find no merit in the present appeal and the same is hereby dismissed with no order as to costs.

13.11.2007 (PERMOD KOHLI)
BLS JUDGE

Whether to be referred to the Reporter? YES/NO